FILE COPY

Office - Supreme Court, U. S.
FILED
APR 14 1947

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 1200 to 1205.

In the Matter of

CHICAGO RAILWAYS COMPANY and CHICAGO CITY RAILWAY COMPANY,

Debtors,

CHARLES H. WORCESTER, et al., NAHUM BIRNBAUM, et al., JAMES A. COLE, et al.,

Petitioners,

vs.

CHICAGO TRANSIT AUTHORITY, et al.,

Respondents.

PETITIONERS' COUNTERSUGGESTIONS TO RESPONDENTS' MOTION AND MOTION OF PETITIONERS CONCERNING PRINTING.

CLYDE E. SHORNY,
JOHN E. GAVIN,
WILLIAM RUFUS MORGAN,
Attorneys for Petitioners.

Schaffer Printing Company, Del. 7171

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 1200 to 1205.

In the Matter of

CHICAGO RAILWAYS COMPANY and CHICAGO CITY RAILWAY COMPANY,

Debtors,

CHARLES H. WORCESTER, et al., NAHUM BIRNBAUM, et al., JAMES A. COLE, et al.,

Petitioners,

VS.

CHICAGO TRANSIT AUTHORITY, et al.,

Respondents.

PETITIONERS' COUNTERSUGGESTIONS TO RESPONDENTS' MOTION AND MOTION OF PETITIONERS CONCERNING PRINTING.

Come now Petitioners herein and present countersuggestions to the Motion filed herein by Respondents under date of April 11, 1947, and their own motion with reference to printing portions of the record only, namely those essential to the consideration of the questions presented by the Petition for the Writ and not heretofore printed and on file.

Countersuggestions.

Petitioners state that this proceeding, seeking a review of the judgment and decision of the Circuit Court of Appeals for the Seventh Circuit, dated January 4, 1947, was not filed for purposes of delay, but that justice may be done. The Petition for a Writ, accompanied by a Brief and full Transcript, was filed within the statutory period. Petitioners seek a review on the record made below.

Neither Petitioners nor counsel took steps in the interval following January 4, 1947, to lead the Respondents to believe that a Petition for a Writ of Certiorari would not be filed. This very important case has moved speedily since Chapter X proceedings were approved.

Petitioners have no objection to the advancement of this cause. They desire to assure the court, however, that they took advantage of all but a few days of the three calendar months allowed by law for the filing of the record and the petition for certiorari, not to delay the cause, but because, as the petition and the supporting brief testify, this important case is one that required prolonged work in order to present it carefully.

Had it been petitioners' purpose to procrastinate for ulterior reasons, they would have filed a petition for rehearing in the Circuit Court. Indeed, without desiring to procrastinate, they might very properly have asked this court for an extension of time in which to file briefs not unusual in a public utility case of these dimensions.

Petitioners submit that, though expedition of this cause is indeed in the public interest, summary treatment of it is not in that interest. It is really summary treatment, not expedition of the cause, that Respondents desire when they ask this court to consider this case before the immediately material parts of the record are even printed.

We have no objection to this court's considering this case upon a typewritten record if the court is willing to do so. But we cannot join counsel for Respondents in requesting the nine members of this court to share a single record in considering this very important case. We therefore suggest that the material parts of the record be printed before the case is, in Respondents' phrase, "disposed of."

Petitioners aver, moreover, that in their opinion printing of certain documents appearing in the original Transcript (in addition to the opinion of the Circuit Court of Appeals) should now be accomplished in order to make suitable service under Rule 38, and for the convenience of the Court and counsel in giving consideration to the matter immediately involved.

The Transcript filed in the Circuit Court of Appeals contains many documents specified by present Respondents, or some of them, taken from the earlier stages of the equity proceedings (discontinued in September, 1944 when petitions for reorganization under Chapter X were approved). Many of these, in turn, relate to Chicago City Railway Company or Calumet and South Chicago Railway Company, constituent companies of Chicago Surface Lines. Petitioners here do not hold or represent holders of securities issued by either of said two Companies. Many items specified by Respondents had in Petitioners' belief no apt place in the Transcript.

In the court below the Transcript of hearings and testimony on the Plan of Reorganization was printed in full (Volumes 1 and 2) and ten copies, as certified by the Clerk of the Circuit Court of Appeals, are on file herein and copies are in possession of counsel representing all the Respondents.

As appears from the Transcript of the Circuit Court of Appeals, a stipulation was entered into in that court, bearing date June 24, 1946, excusing the printing of exhibits and items in the record other than the testimony mentioned, and providing that appellants or appellees might file with their several briefs an appendix in which selected portions of the earlier equity record might be reproduced. The stipulation concerning printing below was in terms applicable to the present proceedings, subject, of course, to this Court's approval.

Appendices were filed in the Circuit Court of Appeals and have been duly certified here and copies are in possession of all parties.

It was also stipulated by parties that in lieu of printing the record in the Chapter X proceeding, consisting of pleadings and documents filed and orders entered, three copies of such record as currently printed by the representative of the District Court, would be filed with the Circuit Court of Appeals. Such volumes contained all matters certified in the original Transcript and contained copies of many additional documents not certified to the Circuit Court of Appeals by the Clerk of the District Court, pursuant to original designations.

There are in the last mentioned category certain cardinal documents which have not to date been produced in form for distribution with the Petition for Certiorari and briefs in support, and Petitioners believe that in the interest of justice the documents immediately listed should now be reproduced, ten copies each, for distribution, being, as Petitioners submit, essential to the consideration of the questions presented by the Petition for the Writ and being sufficient therefor. In addition, the opinion of the Circuit Court of Appeals (copies of which Respondents have ten-

dered) will appear in the Transcript of proceedings in that Court, now being printed under the direction of the Clerk of this Court, viz:

(1) Opinion of District Court, September 18, 1944 on approval of petitions under Chapter X ..... TR. 2313

(2) Report of Illinois Commerce Commission, June 5, 1945, on Trustees' Plan..... TR. 3640

(3) Petition of City of Chicago, August 17, 1945, to substitute Chicago Transit Authority under City proposal..... TR. 3076

(4) Petition of Chicago Transit Authority, Aug. 17, 1945, to be substituted for City.. TR. 3080

(5) Order of August 17, 1945, on above mentioned Petitions ..... TR. 3107

(6) Suggestions of Bankruptcy Trustees, filed September 10, 1945, to SEC Advisory Report on City Proposal and Plan..... TR. 3145

(7) Proposal and Plan of Chicago Transit Authority approved February 27, 1946..... TR. 3231

(8) Opinion of District Court, filed February 20, 1946 on approval of Plan..... TR. 3461

(9) Findings of Fact and Conclusions, and Order approving Plan, entered February 27, 1946 ..... TR. 3473

(10) Order confirming Plan, entered June 17, 1946 ..... TR. 4461

Motion for leave to print or supply documents essential to a consideration of the questions presented by the petition for the writ.

Petitioners move for the entry of an order herein providing that the Clerk of this Court cause to be printed and filed herein, in addition to the proceedings in the Circuit Court of Appeals in the causes sought to be reviewed, the foregoing documents, constituting a part of the Transcript, as certified by the courts below and filed herein, *or that in lieu thereof,* the Petitioners be authorized and permitted to prepare and file herein an appendix to their Petition and Supporting Brief, containing copies of the documents last mentioned, said appendix to be filed and served not later than April 26, 1947, and that Respondents be given leave to file an appendix to their Brief in opposition to the Petition for the Writ, reproducing such additional documents as may be contained in the Transcript of record on file herein as they shall consider essential to a consideration of the questions presented by the Petition for the Writ.

It is believed that the proceeding outlined in the alternate motion will accelerate the filing of the material and date of service, as now fixed by the order entered on April 7th, 1947.

And Petitioners pray for the entry of any other orders which may, in the opinion of the Court, be suitable in the premises.

Respectfully submitted,

CLYDE E. SHOREY,
JOHN E. GAVIN,
WILLIAM RUFUS MORGAN,
Attorneys for Petitioners.